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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/204,013	12/01/98	BALDWIN	W 8530.318USC1

QMO2/0310  
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EXAMINER

PELHAM, J

ART UNIT	PAPER NUMBER
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3742

*9*

DATE MAILED: 03/10/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/204,013**

Applicant(s)  
**Baldwin et al**

Examiner  
**Joseph Pelham**

Group Art Unit  
**3742**



☒ Responsive to communication(s) filed on 23 Dec 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 20-33 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 20-33 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3742

1. The Examiner acknowledges Applicant's submission of the amendment filed December 23, 1999. Claims 20-33 remain pending.

2. Claims 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5454471 to Norvell in view of U.S. Patent 5750962 to Hyatt.

Norvell discloses, at Figures 1-5 and column 7, line 21, through column 8, line 7, a method for transporting cooked pizzas substantially as claimed, including an interior sub-chamber for a heat retention member and hook and loop fasteners. Norvell does not disclose a heating coil in thermal contact with the surface of sealed heat retention member, a thermostat which opens at 95° - 105°C, AC or DC power for the heating coil, a dielectric oil heat retention member, or a rigid base for the heat retention member.

Referring to Figures 1-8, and column 3, lines 21-60, Hyatt discloses a heating coil 24, 26 in thermal contact with a sealed heat retention member 18, a thermostat 30, and AC or DC power for the heating coil. It would have been obvious to one of ordinary skill in the art to adapt the coil, thermostat, and power means of Hyatt to the device of Norvell to allow more convenient heating of the enclosure.

While Hyatt does not explicitly disclose a dielectric oil heat retention member, a rigid base for the heat retention member, or a thermostat which opens at 95° - 105°C, such limitations cannot be regarded to patentably distinguish the claimed invention over the prior art of record, since all are well known in the art or determined by routine engineering considerations. Hence, it would have been obvious to one of ordinary skill in the art to use a dielectric oil since such is an inexpensive and widely available heat storage medium, to provide a rigid base since Hyatt discloses food warmers as an intended application of the heating device, and such use would necessitate a rigid form to allow handling and insertion of the device, and to select a thermostat which opens at 95° - 105°C since the desired temperature of the particular food placed in the warmer would determine the temperature range.

### ***Response to Arguments***

3. Applicant's arguments filed December 23, 1999, have been fully considered but they are not persuasive.

Applicants argue firstly that Norvell's use of microwave energy to heat the heat retention member teaches away from the use of a heat retention member comprising a heating element and power cord, and secondly that Norvell places the heat retention member in a "sealable pocket 24 in the inner liner 16", while the claimed invention utilizes a "sub-chamber...between the bottom wall and the cover within the interior volume."

The claims were rejected, however, over Norvell in view of Hyatt. Hyatt discloses exactly a heat retention member comprising a heating element and power cord placed in a flexible pocket-like holder, and explicitly identifies its advantage over microwave heating (column 1, lines 51-62). Moreover, the pocket of Norvell consists of a sub-chamber between the bottom interior wall 16 and the outer cover 12, as claimed. Since the interior wall and outer cover material may be a

Art Unit: 3742

fabric (column 6, lines 46-61), the pocket would, upon insertion of a heat retention member, obtrude with its contents into the interior volume, as claimed.

***Conclusion***

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication should be directed to Joseph Pelham at telephone number (703) 308-1709, or fax (703) 308-7764.

JP  
March 9, 2000



**JOSEPH PELHAM  
PRIMARY EXAMINER**